

§ 11.1

- 11.111 Former or current Federal Government employees.
- 11.112 Former judge, arbitrator, mediator or other third-party neutral.
- 11.113 Organization as client.
- 11.114 Client with diminished capacity.
- 11.115 Safekeeping property.
- 11.116 Declining or terminating representation.
- 11.117 Sale of law practice.
- 11.118 Duties to prospective client.
- 11.119–11.200 [Reserved]

COUNSELOR

- 11.201 Advisor.
- 11.202 [Reserved]
- 11.203 Evaluation for use by third persons.
- 11.204 Practitioner serving as third-party neutral.
- 11.205–11.300 [Reserved]

ADVOCATE

- 11.301 Meritorious claims and contentions.
- 11.302 Expediting proceedings.
- 11.303 Candor toward the tribunal.
- 11.304 Fairness to opposing party and counsel.
- 11.305 Impartiality and decorum of the tribunal.
- 11.306 Trial publicity.
- 11.307 Practitioner as witness.
- 11.308 [Reserved]
- 11.309 Advocate in nonadjudicative proceedings.
- 11.310–11.400 [Reserved]

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

- 11.401 Truthfulness in statements to others.
- 11.402 Communication with person represented by a practitioner.
- 11.403 Dealing with unrepresented person.
- 11.404 Respect for rights of third persons.
- 11.405–11.500 [Reserved]

LAW FIRMS AND ASSOCIATIONS

- 11.501 Responsibilities of partners, managers, and supervisory practitioners.
- 11.502 Responsibilities of a subordinate practitioner.
- 11.503 Responsibilities regarding non-practitioner assistance.
- 11.504 Professional independence of a practitioner.
- 11.505 Unauthorized practice of law.
- 11.506 Restrictions on right to practice.
- 11.507 Responsibilities regarding law-related services.
- 11.508–11.700 [Reserved]

INFORMATION ABOUT LEGAL SERVICES

- 11.701 Communications concerning a practitioner's services.
- 11.702 Advertising.
- 11.703 Direct contact with prospective clients.

37 CFR Ch. I (7–1–14 Edition)

- 11.704 Communication of fields of practice and specialization.
- 11.705 Firm names and letterheads.
- 11.706–11.800 [Reserved]

MAINTAINING THE INTEGRITY OF THE PROFESSION

- 11.801 Registration, recognition and disciplinary matters.
- 11.802 Judicial and legal officials.
- 11.803 Reporting professional misconduct.
- 11.804 Misconduct.
- 11.805–11.900 [Reserved]
- 11.901 Savings clause.

AUTHORITY: 5 U.S.C. 500, 15 U.S.C. 1123, 35 U.S.C. 2(b)(2), 32, 41.

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Subpart A—General Provisions

GENERAL INFORMATION

§ 11.1 Definitions.

This part governs solely the practice of patent, trademark, and other law before the United States Patent and Trademark Office. Nothing in this part shall be construed to preempt the authority of each State to regulate the practice of law, except to the extent necessary for the United States Patent and Trademark Office to accomplish its Federal objectives. Unless otherwise clear from the context, the following definitions apply to this part:

Attorney or lawyer means an individual who is a member in good standing of the highest court of any State, including an individual who is in good standing of the highest court of one State and not under an order of any court or Federal agency suspending, enjoining, restraining, disbarring or otherwise restricting the attorney from practice before the bar of another State or Federal agency. A *non-lawyer* means a person who is not an attorney or lawyer.

Belief or believes means that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

Confirmed in writing, when used in reference to the informed consent of a person, means informed consent that is given in writing by the person or a writing that a practitioner promptly transmits to the person confirming an

oral informed consent. If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the practitioner must obtain or transmit it within a reasonable time thereafter.

Conviction or *convicted* means any confession to a crime; a verdict or judgment finding a person guilty of a crime; any entered plea, including *nolo contendere* or Alford plea, to a crime; or receipt of deferred adjudication (whether judgment or sentence has been entered or not) for an accused or pled crime.

Crime means any offense declared to be a felony or misdemeanor by Federal or State law in the jurisdiction where the act occurs.

Data sheet means a form used to collect the name, address, and telephone information from individuals recognized to practice before the Office in patent matters.

Disqualified means any action that prohibits a practitioner from participating in or appearing before the program or agency, regardless of how long the prohibition lasts or the specific terminology used.

Federal agency means any authority of the executive branch of the Government of the United States.

Federal program means any program established by an Act of Congress or administered by a Federal agency.

Firm or *law firm* means a practitioner or practitioners in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or practitioners employed in a legal services organization or the legal department of a corporation or other organization.

Fiscal year means the time period from October 1st through the ensuing September 30th.

Fraud or *fraudulent* means conduct that involves a misrepresentation of material fact made with intent to deceive or a state of mind so reckless respecting consequences as to be the equivalent of intent, where there is justifiable reliance on the misrepresentation by the party deceived, inducing the party to act thereon, and where there is injury to the party deceived resulting from reliance on the misrepresentation. Fraud also may be estab-

lished by a purposeful omission or failure to state a material fact, which omission or failure to state makes other statements misleading, and where the other elements of justifiable reliance and injury are established.

Good moral character and reputation means the possession of honesty and truthfulness, trustworthiness and reliability, and a professional commitment to the legal process and the administration of justice, as well as the condition of being regarded as possessing such qualities.

Grievance means a written submission from any source received by the OED Director that presents possible grounds for discipline of a specified practitioner.

Informed consent means the agreement by a person to a proposed course of conduct after the practitioner has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

Knowingly, known, or knows means actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

Law-related services means services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a non-lawyer.

OED means the Office of Enrollment and Discipline.

OED Director means the Director of the Office of Enrollment and Discipline.

OED Director's representatives means attorneys within the USPTO Office of General Counsel who act as representatives of the OED Director.

Office means the United States Patent and Trademark Office.

Partner means a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

Person means an individual, a corporation, an association, a trust, a partnership, and any other organization or legal entity.

Practitioner means:

(1) An attorney or agent registered to practice before the Office in patent matters,

(2) An individual authorized under 5 U.S.C. 500(b), or otherwise as provided by § 11.14(a), (b), and (c), to practice before the Office in trademark matters or other non-patent matters, or

(3) An individual authorized to practice before the Office in a patent case or matters under § 11.9(a) or (b).

Proceeding before the Office means an application for patent, an application for reissue, a reexamination, a protest, a public use matter, an *inter partes* patent matter, correction of a patent, correction of inventorship, an application to register a trademark, an *inter partes* trademark matter, an appeal, a petition, and any other matter that is pending before the Office.

Reasonable or reasonably when used in relation to conduct by a practitioner means the conduct of a reasonably prudent and competent practitioner.

Reasonable belief or reasonably believes when used in reference to a practitioner means that the practitioner believes the matter in question and that the circumstances are such that the belief is reasonable.

Reasonably should know when used in reference to a practitioner means that a practitioner of reasonable prudence and competence would ascertain the matter in question.

Registration means registration to practice before the Office in patent proceedings.

Roster means a list of individuals who have been registered as either a patent attorney or patent agent.

Screened means the isolation of a practitioner from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated practitioner is obligated to protect under these USPTO Rules of Professional Conduct or other law.

Serious crime means:

(1) Any criminal offense classified as a felony under the laws of the United States, any state or any foreign country where the crime occurred; or

(2) Any crime a necessary element of which, as determined by the statutory

or common law definition of such crime in the jurisdiction where the crime occurred, includes interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a “serious crime.”

Significant evidence of rehabilitation means satisfactory evidence that is significantly more probable than not that there will be no recurrence in the foreseeable future of the practitioner’s prior disability or addiction.

State means any of the 50 states of the United States of America, the District of Columbia, and any Commonwealth or territory of the United States of America.

Substantial when used in reference to degree or extent means a material matter of clear and weighty importance.

Suspend or suspension means a temporary debarring from practice before the Office or other jurisdiction.

Tribunal means the Office, a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party’s interests in a particular matter.

United States means the United States of America, and the territories and possessions the United States of America.

USPTO Director means the Director of the United States Patent and Trademark Office, or an employee of the Office delegated authority to act for the Director of the United States Patent and Trademark Office in matters arising under this part.

Writing or written means a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video recording and electronic communications. A “signed” writing includes

U.S. Patent and Trademark Office, Commerce

§ 11.2

an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

[69 FR 35452, June 24, 2004, as amended at 73 FR 47687, Aug. 14, 2008; 77 FR 45251, July 31, 2012; 78 FR 20197, Apr. 3, 2013]

§ 11.2 Director of the Office of Enrollment and Discipline.

(a) *Appointment.* The USPTO Director shall appoint a Director of the Office of Enrollment and Discipline (OED Director). In the event of a vacancy in the office of the OED Director, the USPTO Director may designate an employee of the Office to serve as acting OED Director. The OED Director shall be an active member in good standing of the bar of the highest court of a State.

(b) *Duties.* The OED Director shall:

(1) Supervise staff as may be necessary for the performance of the OED Director's duties.

(2) Receive and act upon applications for registration, prepare and grade the examination provided for in § 11.7(b), maintain the register provided for in § 11.5, and perform such other duties in connection with enrollment and recognition of attorneys and agents as may be necessary.

(3) Conduct investigations into the moral character and reputation of any individual seeking to be registered as an attorney or agent, or of any individual seeking limited recognition, deny registration or recognition of individuals failing to demonstrate possession of good moral character and reputation, and perform such other duties in connection with enrollment matters and investigations as may be necessary.

(4) Conduct investigations of matters involving possible grounds for discipline of practitioners coming to the attention of the OED Director. Except in matters meriting summary dismissal, no disposition under § 11.22(h) shall be recommended or undertaken by the OED Director until the accused practitioner shall have been afforded an opportunity to respond to a reasonable inquiry by the OED Director.

(5) With the consent of a panel of three members of the Committee on Discipline, initiate disciplinary pro-

ceedings under § 11.32 and perform such other duties in connection with investigations and disciplinary proceedings as may be necessary.

(6) Oversee the preliminary screening of information and close investigations as provided for in § 11.22.

(7) [Reserved]

(c) *Petition to OED Director regarding enrollment or recognition.* Any petition from any action or requirement of the staff of OED reporting to the OED Director shall be taken to the OED Director accompanied by payment of the fee set forth in § 1.21(a)(5)(i) of this chapter. Any such petition not filed within sixty days from the mailing date of the action or notice from which relief is requested will be dismissed as untimely. The filing of a petition will neither stay the period for taking other action which may be running, nor stay other proceedings. The petitioner may file a single request for reconsideration of a decision within thirty days of the date of the decision. Filing a request for reconsideration stays the period for seeking review of the OED Director's decision until a final decision on the request for reconsideration is issued.

(d) *Review of OED Director's decision regarding enrollment or recognition.* A party dissatisfied with a final decision of the OED Director regarding enrollment or recognition shall seek review of the decision upon petition to the USPTO Director accompanied by payment of the fee set forth in § 1.21(a)(5)(ii) of this chapter. By filing such petition to the USPTO Director, the party waives any right to seek reconsideration from the OED Director. Any petition not filed within thirty days after the final decision of the OED Director may be dismissed as untimely. Briefs or memoranda, if any, in support of the petition shall accompany the petition. The petition will be decided on the basis of the record made before the OED Director. The USPTO Director in deciding the petition will consider no new evidence. Copies of documents already of record before the OED Director shall not be submitted with the petition. An oral hearing will not be